IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1652 of 1999
in

FIRST APPEALNo 6912 of 1999

with
CIVIL APPLICATION NO. 13980 OF 1999

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE C.K.THAKKAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HARISINH GANPATBHAI BHOI
Versus
KANTILAL KHUSHALDAS NATHANI

Appearance:
MR TUSHAR MEHTA for Appellants
MR YM THAKKAR for Respondent No. 1

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE C.K.THAKKAR

Date of decision: /03/2000

CAV JUDGEMENT

Per Thakker, J.:

This appeal is filed against summary dismissal of First Appeal No. 6912 of 1999 by the learned Single Judge on December 4, 1999.

Appellants were the original defendants in Special Civil Suit No. 43 of 1998. That suit was filed by respondent Kantilal Nathani in the Court of Civil Judge (Senior Division),Godhra for getting possession of suit property from the appellants. His case was that the suit property belonged to him which was let out to one Jamnaben R Bhoi at the monthly rent of Rs. 4/-. Since the plaintiff wanted the suit premises for reasonable and bona fide requirement, he filed Regular Civil Suit No. 152 of 1992. During the pendency of the suit, Jamnaben expired and the appellants were in possession thereof. They were,therefore, joined as legal representatives of Jamnaben. The suit was, however, dismissed by the learned 5th Joint Civil Judge (Senior Division), Godhra on September 12, 1997. While dismissing the suit, the court observed that the appellants were not legal heirs of deceased Jamnaben and they cannot inherit tenancy rights. Said finding according to the respondent, stands today as it was not challenged by the appellants. On the basis of this finding, the respondent filed the present suit for possession on the allegation that the appellants were trespassers . The suit was decreed by the trial court holding that the defendants were trespassers and they have no right to remain in possession of suit premises. The defendants-appellants were directed to hand over peaceful and vacant possession of the suit premises to the plaintiffrespondent.

Being aggrieved by the decree passed by the trial court, the appellants filed First Appeal No. 6912 of 1999 which was dismissed by the learned Single Judge . Said order is challenged in the present appeal.

We have heard Mr. Tushar Mehta for the appellants and Mr. D.M.Thakker for the respondent (on caveat) .

Mr. Mehta contended that the trial court as well as the first appellate court have committed an error of law in decreeing the suit filed by the plaitiff. He submitted that appellant No.1 is tenant within the meaning of Section 5 (11) (c) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 , (hereinafter referred to

as `the Act') and since he was and is ready and willing to pay rent, no decree of eviction could be passed against him. He stated that all conditions laid down in the aforesaid provision were satisfied inasmuch as appellant No.1 was residing with Jamnaben since more than three months immediately preceding death of Jamnaben . Hence, he became the tenant of the property. It was also contended that appellant No.1 was legally adopted son of Jamnaben and for that reason also, he ought to have been held tenant. Relying on certain decisions of the Supreme Court, Mr. Mehta submitted that the word `family' must be construed liberally and wider meaning ought to have given so that in the term `family' near relatives are included. Beneficial provisions must be construed in the light of underlying object of the Act and in favour of tenants. Mr. Mehta stated that Jamnaben was not keeping good health. It was appellant No.1 who resided with her as he was adopted son of Jamnaben and family of appellant No.1 stayed with Jamnaben all throughout. He, therefore, submitted that courts below have committed an error of law in not treating appellant No.1 as tenant of the respondent and the LPA deserves to be admitted.

Mr. D.M.Thakker, on the other hand, supported the decree passed by the trial court and confirmed by the learned Single Judge. He submitted that even in earlier suit, a finding was recorded by the competent court that appellant No.1 was not legal heir of deceased Jamnaben and he cannot inherit tenancy rights. Said finding was never challenged by appellant No.1 . He also submitted that theory of appellant No.1, being adopted son of Jamnaben was not believed by the court. According to him, provisions of Section 5 (11) (c) of the Act would apply provided a person is a member of the tenant's family and residing with him / her. Appellant No.1 was never a family member of Jamnaben and in that capacity, he never resided with her. In fact, he was residing separately but since Jamnaben was having heart ailment, he stayed with her for some time which would not make him her family member or tenant as defined in clause (c) of Section 5 (11). He, therefore, submitted that the trial court as well as the first appellate court were right in rejecting the contention of the appellants and the appeal deserves to be dismissed. In our opinion, the decree passed by the trial court and confirmed by the lower appellate court does not call for any interference. The trial court considered in detail evidence adduced by the parties and held that appellant No.1 was not family member of Jamnaben and he did not reside in the suit premises in that capacity. His case , therefore, was not

covered by the definition of `tenant' under Section 5 (11) (c) of the Act. The court also did not believe the fact that appellant No.1 was adopted as son of Jamnaben. The court observed that in the ration card, name of the mot her of appellant No.1 was mentioned as Kamlaben Kamuben and not Jamnaben. From the evidence also, it is clear that appellant No.1 had admitted that since Jamnaben was having heart trouble and as appellant No.1 was not having sufficient accommodation, he could not take Jamnaben to his house. Instead, he came to reside with Jamnaben. In earlier suit, the theory of adoption was not believed by the court. If, in the light of all these facts and circumstances, the trial court has passed the decree in favour of the respondent-plaintiff, holding appellant No.1 as trespasser and the first appellate court dismissed the appeal, it cannot be said that they have committed any error which requires to be corrected by this court. Regarding family members also, both the courts, in our opinion, rightly held that appellant No.1 who is cousin brother of Jamnaben, cannot be said to be a member of family of deceased Jamnaben. The case law to which our attention was invited does not carry the case of the appellants further in view of evidence on record.

We, therefore, see no ground to interfere with the decree passed by the trial court and confirmed bay the learned Single Judge. LPA, therefore,deserves to be dismissed and is accordingly dismissed. In the facts and circumstances of the case, there shall be no order as to costs. No order on civil application.

-